IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

ARBITRATION PETITION (LDG) NO.698 OF 2007

1. Percept Talent Management Pvt. Ltd.
   a company registered under the
   Companies' Act, 1956, having its
   registered office at P2, Level 2A,
   Raghuvanshi Estate, 11/12 Senapati
   Bapat Marg, Lower Parel (W),
   Mumbai-400 013.

2. Percept D' Mark India Pvt. Ltd.
   a company registered under the
   Companies' Act, 1956, having its
   registered office at P2, Level 2A,
   Raghuvanshi Estate, 11/12 Senapati
   Bapat Marg, Lower Parel (W),
   Mumbai-400 013. ...Petitioners.

Vs.

1. Yuvraj Singh,
   An Indian Inhabitant residing at
   F-5/9, DLF Phase 1, Gurgaon 122001.

2. Globosport India Private Limited,
   a company incorporated under the
   Companies' Act, 1956, and having its
   registered office at 339, 1st Floor,
   I Main Road, Cambridge Layout,
   Someshwarpuura Post, Ulsoor,
   Bangalore-560 008. ...Respondents.

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Mr. Virag Tulzapurkar, Senior Advocate with Mr. Venkatesh Dhond, Mr.Amit Naik, Mrs Madhu Chaudhary Gadodia and Ms. Hemangi Abhyankar i/b. Naik, Naik, Iyer & Co. for the Petitioners.
Mr.J. J. Bhatt, Senior Advocate with mr. J. A. Shah i/b. A. Shah & Associates for Respondent No.1.
Mr. Kamal Khata i/b. Daru Shah for Respondent No.2.

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CORAM :DR.D.Y.CHANDRACHUD, J.
December 7, 2007.

ORAL JUDGMENT :

Yuvraj Singh plays cricket for India. As the First Respondent, he is arrayed as a party to this proceeding off the field of cricket. A thin end of the wedge divides what a sportsperson does on the field and off it. But, it is the law which addresses legal rights and duties. The law will govern this dispute.

The Agreement:

2. An agreement styled as a Promotion Agreement, was entered into between the Second Petitioner and the First Respondent purportedly on 12th December 2003. By the agreement, the First

Respondent appointed the Second Petitioner as his sole and exclusive agent inter alia to manage and market the services and day to day affairs of the First Respondent in respect of media, advertisement and related activities. By a Deed of Assignment dated 1st April 2007 all the rights and obligations of the Second Petitioner under the first agreement were duly assigned in favour of the First Petitioner. Clause 9 of the agreement provided that during the contractual term, the First Respondent shall not engage any other person for or in relation to or in connection with the subject matter of the Agreement including the rights granted inter alia under clause 4.2. Clause 17 of the agreement defines the term of the Agreement. Under clause 17.1, the agreement came into force and effect on 16th October 2003 and was to continue to remain in force for a period of four years from the date of the execution of the agreement or till the conclusion of the ICC World Cup 2007, whichever was later.

3. According to the Petitioners, the agreement was executed on 12th December 2003 and though it has come into force from an

anterior date, agreement being valid for four years from the date of the execution would continue to subsist until 11th December 2007. On the other hand, according to the First Respondent, parties understood that the agreement has come into force from 16th October 2003 since the Deed of Assignment between First and Second Petitioners contains a specific recital to that effect. This, according to the First Respondent is also evident by a letter written by the First Petitioner to the First Respondent on 23rd October 2007. This difference between the parties will ultimately have no bearing little the conclusion of these proceedings which arise under Section 9 of the Arbitration and Conciliation Act, 1996.

The Petition :

4. The Promotion Agreement contains an arbitration clause and in these proceedings under Section 9, the relief that has been sought, pending the hearing and final disposal of the arbitral proceedings, is an order restraining the First Respondent from entering into negotiations or an agreement with any other party in

respect of the subject matter of the Promotion Agreement without complying with the provisions of the agreement. The second relief that has been sought is that the First Respondent should be injuncted from entering into an agreement with a third party without furnishing to the Petitioners a right of first refusal to match any offer received by the First Respondent from a third party. The third relief is a mandatory direction to the First Respondent to provide to the Petitioners a copy of the contract and the detailed terms and conditions of any offer received by the First Respondent from any third party with which the First Respondent proposes to enter into an agreement. The final relief that has been sought is an injunction restraining the First Respondent from rendering services similar to the services contemplated under the Promotion Agreement to any other person or entity other than the First Petitioner.

The Negative Covenant :

5. The dispute that arises in these proceedings essentially focuses upon the provisions of clause 19 of the Agreement of

Promotion. In order to facilitate a degree of clarity, it would be appropriate to quote the provision as it stands:

> "19.1 Negotiation:
>
> Percept shall have the unconditional right to renew this Agreement for a further period of 4 (four) years in accordance with the procedure set out in this clause 19.
>
> During the Term of this Agreement, and in any event not later than August 16, 2007 if Percept at its sole discretion may require, the Parties shall meet to commence discussions with a view to the extension of their relationship beyond the Term. For sixty (60) days thereafter, Yuvraj agrees to negotiate in good faith only with Percept, and not with any third party, concerning the renewal /extension of the arrangement contemplated under this Agreement and/or for the right after the Term to the use of his endorsement or for the arrangement contemplated by this Agreement in association with any goods or services. Only after such sixty days (60) day period, Yuvraj shall have the right to negotiate with other persons, subject however to sub-clause 19.2.
>
> 19.2 Right to First Refusal.
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> After the Term of this Agreement, in the event the good faith negotiations initiated under clause 19.1 fail to result in mutually agreeable terms of extension of the agreement, Yuvraj shall be free to negotiate with any third party. Provided always that Yuvraj agrees not to accept any offer for his endorsement, promotion, advertising, or other affiliation with regard to any goods or services or for arrangement similar to the transaction hereunder including

> the appointment of another agent without first providing Percept with written notice of such offer and all the terms and conditions thereof including the final draft of the contract offered by such third party and offering Percept the right to match the third party offer. Percept shall thereafter have the right, exercisable by written notice to Yuvraj within ten (10) days of receipt, to accept such offer on the same terms and conditions offered by such third party. If Percept does not accept such offer, Yuvraj shall thereafter have the right to enter into an agreement with such third party on terms not more favourable than the terms offered to Percept."

6. By and as a result of Clause 19.1, the Petitioners were conferred a right to renew the agreement for a period of four years. The clause, however, sets out the procedure that was required to be followed. The first requirement was that during the term of the agreement and no later than 16th August 2007, parties if so required by the Petitioners had to commence discussions on the extension of the Contract. Secondly, the clause envisages that for a period of sixty days thereupon the First Respondent could negotiate only with the Petitioners and not with any third party for the renewal of the contract. Thirdly, upon the expiry of the period of sixty days, the First

Respondent would have a right to negotiate with other persons subject to clause 19.2. Now, in so far as clause 19.2 is concerned, it is necessary to note that it is prefaced by the words “After the term of this agreement”. Those words postulate that the provision which is contained therein is to govern the period after the contractual relationship between the parties had come to an end. Clause 19.2 stipulates that in the event that the negotiations between the parties under clause 19.1 fail to result in any concluded agreement, the First Respondent would be free to negotiate with any third party. However, the First Respondent was not to accept any offer made by a third party for endorsement, promotion, advertising, or other affiliation similar to the Promotion Agreement without first providing the Petitioners with a written notice of such offer and furnishing an opportunity to the Petitioners to match the offer of the third party. The Petitioners thereafter have been conferred a right exercisable by a written notice within ten days of receipt of a communication from the First Respondent to accept the offer on the same terms and conditions as offered by such third party. If the Petitioners fail to

accept such an offer, the First Respondent would thereafter have a right to enter into an agreement with the third party.

7. Clause 19.2 contains a negative covenant. The negative covenant is that upon the expiry of the term of the agreement, the First Respondent would, in the event that negotiations with the Petitioners fail to result in a concluded contract in pursuance of clause 19.1, be free to negotiate with a third party subject to the condition that before the contract is awarded to a third party, the Petitioners would have the right of first refusal. The First Respondent is precluded from concluding an agreement with a third party until an opportunity is granted to the Petitioners to match the offer. Should the Petitioners agree to match the offer of the third party, the First Respondent is under an obligation to award the contract only to the Petitioners.

Interlocutory Relief :

8. Where an application is made for an interlocutory injunction

during the pendency of a suit, the exercise of discretion by the Court is guided by (i) Whether the Plaintiff has a prima facie case; (ii) Whether the balance of convenience is in favour of the Plaintiff; and (iii) Whether the Plaintiff would suffer an irreparable injury if the prayer for interlocutory injunction were to be refused. The decisions of the Supreme Court in **Wander Ltd. v. Antox India (P) Ltd.**,[1] and in **Gujarat Bottling Co. Ltd. v. Coca Cola Co.**,[2] enunciate those facets which must be borne in mind by the Court in such cases. The Supreme Court observed thus in **Gujarat Bottling Co.** (supra).

> "The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been

1 1990 Supp SCC 727
2 (1995) 5 SCC 545

> prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies."

9. In the background of these principles, it is necessary for the Court to have regard to the scope of the agreement between the parties. Clause 2 of the agreement provides thus:

> "Yuvraj hereby appoints Percept and its directors and authorized employees as his sole and exclusive agent to manage and market the Services and day to day affairs of Yuvraj in respect of media, advertising and related activities and relating to the Services as per the terms of this Agreement in the Territory, render various consulting services and other activities through all types of media, in particular, those set forth in Clause 3 hereto and authorizes Percept to negotiate, execute and deliver all types of contracts and documents on his behalf with clients on such terms and conditions as Percept may, in its sole discretion, determine. For this purpose, Yuvraj hereby irrevocably appoints Percept and its directors and employees as his duly constituted attorneys, to represent him in respect of the subject matter of this agreement, execute all necessary contracts and other documents in relation thereto and take all necessary actions in this regard on his behalf pursuant to or in connection with this Agreement. Yuvraj further agrees to unconditionally ratify all actions of Percept and its directors and employees taken by them under or pursuant to this Agreement."

The services which the First Petitioner is required to provide under the agreement are defined in clause 3 of the agreement as follows :

> "It is clarified that Percept will prepare all the material for the advertising, marketing and management of all agreements, legal paperwork and profile for Yuvraj in respect of the Services provided by Yuvraj. Percept shall market and manage the endorsements, events, public appearances, social/charity events, entertainment event, sports management & marketing, internet marketing, radio interviews, brand, all intellectual property rights, public relations activities, broadband publicity, worldwide merchandising rights, legal rights and obligations of Yuvraj, select the brands and products to be endorsed by Yuvraj etc. (Percept Services). Percept for this purpose shall dedicate a team of professionals, consisting of such number of persons as Percept in its sole discretion may consider appropriate from their celebrity division who shall devote reasonable time to look after the marketing, management and other affairs of Yuvraj. It is clarified that any expenses incurred by Percept while providing the Percept Services shall be borne by Percept."

Under clause 4.2 of the agreement, the First Petitioner would have the sole and exclusive right to the following :

> "(a) Right to create and manage an official Yuvraj Singh fan club in any part of the Territory.

(b) Right in any television/radio interviews and features/ documentaries in any part of the Territory.

(c) Right to all syndicated columns on air/ground anywhere in the Territory.

(d) Right to all television appearances/telecast rights/ production rights involving Yuvraj including synchronization rights in respect of each of them.

(e) Right to create, operate and maintain websites in name of Yuvraj, including domain name in www.yuvrajsingh.com, or such other domain name containing reference to Yuvraj and other internet marketing and advertising rights including internet based chat sessions."

The Court in an application under Section 9 of the Arbitration and Conciliation Act, 1996, has the power to order an interim measure of protection including an interim injunction. Prima facie it would be apparent from a perusal of the agreement between the parties that the contract involves the performance of services which can be regarded as personal, confidential and fiduciary. The First Respondent is a sportsperson. Success on the cricket field translates into a potential for commercial gain. Cricket is no longer about milestones and statistics alone – of centuries scored and hatricks

achieved. The game has become intensely competitive, be it in the more traditional forms of test cricket or the increasingly popular T20 exercises. The competition on the field is marked by no less a vigorous competitive marketing exercise off the field. To the millions of fans, cricketers are icons – a status which is purveyed on the electronic media in advertising for a whole range of consumer products. The game in its modern form is all about marketing. And marketing is what translates individual success on the field into commercial success off the field. The Promotion agreement between the Petitioners and the First Respondent is to provide an interface of the First Respondent with the world outside. The agreement covers almost the entire gamut of the public life of a modern day cricketer – events, media, intellectual property, even fan clubs and domain names. An agreement of this kind is founded on trust, confidence and the basic principles which underlie a fiduciary relationship. The agreement is an instrument to provide an exposure to the public persona of the sportsperson. The public image of the sportsman is what the agreement is inextricably involved in generating. And the

agent who represents the sportsman, negotiates on his behalf and deals as his sole and exclusive representative is a vital link in the creation of a public image. Such agreements are founded on trust and confidence. Where trust and confidence have ceased to exist in a relationship, the relationship cannot survive. The law will not enforce and compel parties to observe a relationship such as this where the foundation upon which it exists disappears. For the law does not enforce the husk where the substance does not survive. The aggrieved party is left to seek its remedies for breach in damages.

10. Specific performance of such a contract would prima facie be barred by clauses (a), (b) and (d) of sub-section (1) of Section 14 of the Specific Relief Act, 1963. The Contract between the parties is essentially a contract for personal services of which specific performance cannot prima facie be granted. The balance of convenience would weigh against the grant of an injunction because whereas the Petitioners could be fully compensated in monetary

terms if they finally succeed in the arbitral proceedings, the First Respondent would be irrevocably prejudiced by being compelled to enter into a contract with a party with whom he does not desire to deal. The Court, therefore, would not be justified particularly at the interlocutory stage in directing a sportsman to employ an agent or manager in whom there is a loss of confidence.

The Enforceability of the Negative Covenant :

11. The issue canvassed before this Court is whether a negative covenant of the nature involved in clause 19.2 can be enforced. Section 27 of the Contract Act provides that every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is that extent void. An exception is carved out where a goodwill of the business is sold. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business. However, such limits must

appear to the Court to be reasonable, having regard to the nature of the business.

12. The High Courts in India have held that neither the test of reasonableness nor the principle of a restraint being partial or reasonable is attracted to a case governed by Section 27 unless it falls within the exception. A condition which operates during the term of employment, has been held to be valid but a condition which operates beyond the expiry of the term of the contract has been held to be a restraint on trade which would be hit by Section 27 of the Contract Act. (**Niranjan Shankar Golikari vs. Century Spg. and Mfg. Co. Ltd.**, AIR 1967 SC 1098; **Superintendence Co. of India (P) Ltd. vs. Krishan Murgai,** (1981) 2 SCC 246 (per A.P. Sen, J.); and **Gujarat Bottling co. Ltd. v. Coca Cola Co.**, (1995) 2 SCC 545).

13. The question, in so far as the Petitioners are concerned, is considered in a decision of the Supreme Court in **Percept D'Mark**

(India) (P) Ltd. vs. Zaheer Khan.[3] The clause in the agreement that was entered into by the Petitioner in that case – clause 31(b) – contained a negative covenant under which the parties had initially agreed to enter into negotiations for the renewal of the existing contract by a stipulated date. The contract provided, as in the present case, that negotiations will exclusively take place for a stipulated period between the parties alone and upon the expiry of the period, the Respondent would be entitled to negotiate with other persons. The contract, however, contained a right of first refusal. In a petition under Section 9 of the Arbitration and Conciliation Act, 1996, a Learned Single Judge of this Court granted an ad-interim injunction restraining the Respondent there from entering into an agreement or arrangement with any third party without first complying with his obligations under clause 31(b) of the Agreement. A Division Bench of this Court, reversed the order of the Learned Single Judge and thereupon a Special Leave Petition was filed before the Supreme Court. The Supreme Court noted that what the Appellant had sought

3 (2006) 4 SCC 227

to enforce was a negative covenant which according to Appellant, survived the expiry of the agreement. This, the Supreme Court held, had rightly been recorded by the Division Bench of this Court as being impermissible as "such a clause which is sought to be enforced after the term of the contract is prima facie void under Section 27 of the Contract Act.[4] Holding that the Division Bench was justified in setting aside the order of the Learned Single Judge, the Supreme Court held as follows :

> "No case was made out by the appellant for compelling Respondent 1 to appoint the appellant as his agent in perpetuity. In view of the personal nature of the service and relationship between the contracting parties, a contract of agency/management such as the one entered into between the appellant and Respondent 1 is incapable of specific performance and to enforce the performance thereof would be inequitable. Likewise, grant of injunction restraining the first respondent would have the effect of compelling the first respondent to be managed by the appellant, in substance and effect a decree of specific performance of an agreement of fiduciary or personal character or service, which is dependent on mutual trust, faith and confidence."

The Supreme Court held that even on the assumption that the

4 At paragraph 54, page 245

negative covenant in clause 31(b) was not void and was enforceable, it was “nevertheless inappropriate, if not impermissible” for the Single Judge to grant an injunction to enforce it at the interim stage, for the following reasons:

-(i) The grant of an injunction will result in the specific performance of a contract of personal, confidential and fiduciary service which is barred by clauses (b) and (d) of Section 14(1) of the Specific Relief Act, 1963; (ii) There could be no specific performance of contracts for personal services; (iii) The grant of injunction would amount to granting of the entire relief which may be claimed at the conclusion of the trial; (iv) While the Appellant could be fully compensated in monetary terms if it finally succeeded, the Respondent could never be compensated for being compelled to enter into a contract with a party with whom he did not desire to deal; (v) The grant of injunctive relief in a contract of a personal or fiduciary nature such as management and agency contracts for sportsmen or performing artistes would result in serious hardship notwithstanding the fact that there was a loss of confidence in a manager or agent

who has been engaged in a fiduciary capacity. The clause was considered to be in restraint of trade and hit by Section 27 of the Contract Act:

> "Clause 31(b) contains a restrictive covenant in restraint of trade as it clearly restricts Respondent 1 from his future liberty to deal with the persons he chooses for his endorsements, promotions, advertising or other affiliation and such a type of restriction extending beyond the tenure of the contract is clearly hit by Section 27 of the Contract Act and is void. The said covenant, as noticed earlier, curtails the liberty of Respondent 1 Zaheer Khan even though the contract has been completed to accept any offer for his endorsement, promotion, etc. even by dealing with any person of his own."

14. The judgment of the Supreme Court is, however, sought to be distinguished in the submissions which have been urged on behalf of the Petitioners in this case. Firstly, it was urged that while the Supreme Court held that the covenant which conferred upon the agent a right of first refusal and therefore, precluded the sportsman from entering into a contract with any third party was void, Paragraph 66 of the judgment contemplates that an obligation to furnish the agent an opportunity to match the offer received from a third party is

not void. Secondly, it is submitted that clause 31(b) of the agreement which fell for consideration before the Supreme Court was operative during the term of the agreement, while in the present case, clause 19.2 must be regarded as constituting an independent agreement between the parties that would govern the future after the term of the agreement had already expired. Thirdly, it is urged that Section 42 of the Specific Relief Act provides that where a contract comprises an affirmative agreement to do a certain act, coupled with a negative covenant not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement.

15. Now Clause 31(b) of the Contract which fell for consideration before the Supreme Court was prefaced by the words “during the term of the agreement”. Prior to the completion of the first negotiation period, the Respondent agreed not to accept any offer for his endorsement or promotion. Thereafter, the First Respondent

agreed not to accept any offer without furnishing an opportunity to the appellant to match an offer of a third party. The judgment of the Supreme Court considers the matter of principle from two perspectives. The first is that what the appellant has sought to enforce was a negative covenant which according to the appellant had survived the expiry of the agreement. This, the Supreme Court held, was not permissible in law as a clause which is sought to be enforced after the term of the contract would prima facie be void. The Supreme Court adverted to the position that under Section 27 of the Contract Act, a restrictive covenant extending beyond the term of the contract was void but the doctrine of restraint of trade did not apply during the continuance of a contract for employment. The second part of the judgment of the Supreme Court deals with the question as to whether, assuming that such a negative covenant is valid, it would be appropriate for the Court to grant an injunction to enforce it, at the interim stage. In the present case, clause 19.2 begins with the words “after the term of this agreement”, meaning thereby that the clause contemplates an eventuality of enforcement

upon the expiry of the term of the contract. The effect of the negative covenant is that upon the expiry of the term of the contract, the First Respondent is precluded from entering into a contract with a third party without offering a right of first refusal and should the First Petitioner agree to match the offer received by the First Respondent from a third party, the First Respondent is bound to award the contract to the First Petitioner alone. It is exactly this kind of negative covenant which operates beyond the term of a negotiated agreement between the parties that has been held by the Supreme Court to be void as being in restraint of trade.

16. The submission that clause 19.2 constitutes an independent agreement cannot be accepted for more than one reason. Clause 19.2 is a constituent part of clause 19 which deals with 'negotiation and the right of first refusal'. Clause 19.1 initially speaks of negotiations during the term of the contract, in the event that the Petitioners required such negotiations to be held no later than 16th August 2007. In such an event, the First Respondent agreed to

negotiate exclusively with the Petitioners for a period of sixty days after which he was allowed to negotiate with the third parties. Clause 19.2 comes into operation in the event that negotiations initiated under clause 19.1 fail to result in mutually agreed terms of extension. Clause 19.2 provides for an eventuality after the term of agreement has expired. Prima facie at this stage Clause 19.2 cannot be regarded as a term independent of the existing contract.

17. Similarly, the observations of the Supreme Court in paragraph 66 cannot be read in isolation. The obligation to furnish details of an offer received from a third party is an adjunct to the right of first refusal. It is intended to facilitate the exercise of the right of first refusal. If that right is incapable of specific performance, the former must fall by the same logic in an interim application under Section 9 of the Arbitration and Conciliation Act, 1996.

18. The submission based on Section 42 of the Specific Relief Act, 1963 would not carry the case of the Petitioners any further.

Section 41 provides for situations where an injunction cannot be granted. Amongst others, clause (e) is a provision under which an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. Section 42 is prefaced by a non-obstante clause which operates notwithstanding anything contained in clause (e) of section 41. What Section 42 provides is that where a contract comprises an affirmative agreement to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. In other words, Section 42 lifts the bar under Section 41 (e) to the grant of an injunction to prevent the breach of a contract the performance of which would not be specifically enforced. The bar is lifted in the sense that where the contract comprises of an affirmative agreement as well as an agreement not to do something, the Court is not precluded from granting an injunction to perform the negative agreement even if it is unable to compel specific performance. Lifting of the bar is not a mandate to the Court to grant an injunction for

performance of a negative covenant in every case. Whether as a matter of fact an injunction should be granted for performance of a negative agreement is to be assessed on the application of sound judicial principles, on the circumstances of each case. Where as in the present case, the negative agreement would amount to a clause in restraint of trade, the Court would be justified while discharging its judicial function in declining to grant an injunction for the performance of a negative covenant of that nature. Finally it must be noted that in the concluding part of the judgment in **Zaheer Khan**, the Supreme Court observed that its observations were for deciding a prima facie case for interim relief. **Zaheer Khan** follows a line of precedent beginning with **Golikari** and including **Murgai** and **Gujarat Bottling** (supra).

19. In these circumstances, I am view that the relief that has been sought in the Arbitration Petition cannot be granted. However, it would be necessary to conclude the judgment by recording the statement of the First Respondent that without prejudice to the

contention of the First Respondent that the term of the agreement has expired and even on the understanding that the agreement is to continue to subsist until 11th December 2007, the First Respondent does not intend to enter into any negotiations or to conclude any agreement with a third party until 11th December 2007. The statement is accepted. Before concluding, it would also be appropriate to clarify that the observations contained in this judgment are confined to the disposal of the application under Section 9 and shall not preclude parties from agitating their rights and contentions before the Arbitral Tribunal.

20. The Petition is dismissed.

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